

**BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
DECEMBER 2, 2008**

- CALL TO ORDER** A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present were Craig Wagner, Gina Klempel, Scott Hollinger, and Tony Sagami. Mark Hash was absent. Jeff Harris, Andrew Hagemeier, and Dianna Broadie represented the Flathead County Planning & Zoning Office.
- There were approximately 21 people in the audience.
- APPROVAL OF MINUTES** Wagner made a motion seconded by Klempel to approve the November 5, 2008 minutes.
- The motion carried by quorum.
- PUBLIC COMMENT**
(not related to agenda items) None.
- PUBLIC REVIEW** Hollinger reviewed the public hearing process.
- FORTUNA CONDITIONAL USE PERMIT (FCU 08-17)** A request by Raymond & Anne Fortuna, for a Conditional Use Permit to operate and expand a contractor storage yard on their property within the Willow Glen, R-1 (Suburban Residential) Zoning District. The property is located at 1900 Highway 35.
- STAFF REPORT** Jeff Harris, on behalf of George Smith, reviewed the changes requested by the applicant to Staff Report FCU 08-17 for the Board.
- BOARD QUESTIONS** Sagami asked the previous use of the property.
- The applicant stated it was a car repair shop.
- APPLICANT PRESENTATION** Ray Fortuna, 653 South Whitetail in Bigfork, talked about the area and activity surrounding the subject property. He considered a zone change, but was advised by George Smith to try to conform as much as possible to the current zoning of the property. He offered to start his vehicles and move them to the north end of the property to minimize noise.
- Sagami asked what type of equipment he is starting up in the morning.
- Fortuna stated they have two diesel pick-ups during the week and a semi-truck with a low trailer on the property two to three times a week. He keeps the vehicles plugged in to minimize the noise level and the

time the vehicles need to warm up. He is attempting to solve complaint issues as he has seen them brought to light.

Klempel asked what year the vehicles are.

Fortuna said one is a 2007 and other is a 2003. He reiterated he is trying to move trucks to a quieter part of property for the duration of warm up time.

**PUBLIC
COMMENT**

Barry Ultican, 1850 Highway 35, spoke on behalf of Larry Wayne and Don and Phyllis Bartilini. He said the issue at hand is not only noise, but the fact the property was allowed to be developed without approval of any kind. He briefly went over the history of the types of businesses which have occupied the property. He stated most of the previous businesses operated indoors behind four walls, so noise was not as big of an issue for the neighbors. He feels there is a lot more activity, as far as noise and vehicles on the property, than was disclosed by the applicant in his presentation. He brought up the noise issue the neighbors are concerned about, especially the early morning hours and late evening hours in the summer. He is requesting a denial of the conditional use and wishes to see the business moved elsewhere.

John Truzzolino, 588 Swan Mountain Village Road, said he bought property from Ultican with the understanding the area is residential, not commercial. He said he doesn't have anything against the business but has a problem with the noise.

**STAFF
REBUTTAL**

Harris told the board he sent a violation letter back in June. He talked about section 2.07 of the Zoning Regulations that allows for expansion with a conditional use permit.

**APPLICANT
REBUTTAL**

Fortuna said from the middle of the property you can not hear much noise from his vehicles in the back of the property because of the traffic noise coming from the highway. He thinks the neighbors' complaints should be about the traffic from the highway and the commercial use across the street. He stated he is willing to do what it takes to help solve the neighbors' main concern which appears to be noise from his vehicles.

**BOARD
DISCUSSION**

Sagami asked Harris about his statement that the current use would be becoming less conforming.

Harris said they would be expanding an industrial use in a residential area.

Sagami wondered what main concern is with it becoming less conforming. He wondered if it was the noise of the current use of the property.

Klempel asked about the county's definition of storage.

Harris said the issue came about in July when a complaint was filed. It is not necessarily an issue of storage. He said the business is growing and the area is not appropriately zoned for commercial expansion.

Sagami asked Ultican if he had any suggestions to mitigate the noise or if he thinks the noise should not be allowed.

Ultican said you can hear equipment on the property. The traffic from the highway does not drown out the noise from the large vehicles which rattle the windows on his house when operating. He said nothing was stored at the property in the past other than the previous owner who detailed and customized cars.

Truzzolino added that the lots on the fence line of the property in question are for a residential retirement subdivision and the fact the noise is an issue will affect the sale of those lots.

The board discussed, at length, uses of properties in the area and whether or not noise is an issue with the other activity surrounding the area.

Fortuna stated he has never done an oil change on the property and the storage of large vehicles on the property is minimal. There is a dump truck stored on the property one-third of the week and the other truck doesn't sit and idle for more than a few minutes. There are two other pick-up trucks that leave and return to the property once a day. In his opinion the neighbors' statements are exaggerated. He brought up current landscaping which helps mitigate the noise levels and his efforts to minimize the noise level.

Hollinger asked if there was any possibility of berming.

Fortuna said yes, definitely, and he would consider additional landscaping to help with the problem.

Harris said change in use is a physical change to the property or the use. In this case, it is a change in use. The current change is not a permitted use or a conditional use in the R1 zoning district.

Fortuna understood but said a previous owner of the property had a tow truck company and the tow trucks made multiple trips in and out of the property and were large vehicles as well.

The board discussed the history of zoning and uses of surrounding areas at length. They also clarified the physical layout of the property with the applicant.

**MOTION TO
APPROVE**

Sagami made a motion seconded by Wagner to adopt staff report FCU 08-17 with the proposed conditions.

**BOARD
DISCUSSION**

None.

ROLL CALL

On a roll call vote the motion unanimously.

**TOM BROWN
VARIANCE
(FZV 08-06)**

A request by Tom Brown for a Zoning Variance to property within the Bigfork, SAG-10 (Suburban Agricultural) Zoning District. The applicant is requesting a variance to Section 3.07.040 (1) of the Flathead County Zoning Regulations which requires the minimum lot area to be ten acres. The applicant wishes to deed approximately ½ acre to an adjoining property owner as that portion of the subject parcel is separated by a road. The property is located at 1173 Cygnet Trail.

STAFF REPORT

Andrew Hagemeyer reviewed Staff Report FZV 08-06 for the Board.

**BOARD
QUESTIONS**

Sagami asked if the neighboring property is also SAG-10.

Hagemeyer said yes. The Bigfork Land Use Advisory Committee (*BLUAC*) reviewed the application and has recommended denial. Currently, there is one conforming lot to the SAG-10 and one non-conforming lot. If this zoning variance is granted, there will be two non-conforming lots.

Wagner asked if it would be easier to bestow an easement.

Hagemeyer said yes, it is an alternative but he is not sure an easement would meet the landowner's needs.

Klempel asked if a boundary line adjustment (*BLA*) would fit the needs of the applicant.

Hagemeyer said a BLA is what the applicant is ultimately trying to do. It won't work unless the applicant is able to keep his lot size 10 acres, to conform to SAG-10, and adjust the boundary line to compensate for the land deeded to the adjacent landowner. If they had been able to do that, they wouldn't be going through the zoning variance process.

**APPLICANT
PRESENTATION**

Tom Brown, 235 Siderius Lane in Bigfork, thanked the board for their time. He explained how this request came about and said there is a road that splits his property. The adjoining neighbor would like the land to maintain continuity with the landscaping he did on his side of the road and improve the overall appearance of the neighborhood. He said he met with two different planners in the Planning & Zoning office. He stated there were many different lot sizes which were in place before the SAG-10 zoning went into effect, so it is not uncommon

in the area to have lots less than 10 acres in size. He is here to request a common sense solution to a bad plat.

Sagami asked if it was a fairly insignificant amount of money which would exchange hands.

Brown replied the adjoining property owner did not give permission for Brown to release the amount, but said the sale of the ½ acre is not economically motivated.

Hollinger asked if there would be a way to get land from the north or south to keep the parcel 10 acres.

Brown said he would need to look at the plat map.

Hollinger asked if an easement was discussed between the two parties.

Brown said they did an easement in anticipation of denial of the zoning variance request.

**PUBLIC
COMMENT**

None.

**STAFF
REBUTTAL**

Hagemeier said the applicant was told he has the opportunity to apply for the variance and apologized if he felt misdirected.

**BOARD
DISCUSSION**

Sagami believes it qualifies as a hardship because it is separated by the road and doesn't believe the request is economically motivated and he supports it.

Hollinger asked if Wagner was at the BLUAC meeting.

Wagner said yes and reported BLUAC denied the request because they felt an easement or BLA would serve the same purpose.

The board discussed the implications of granting the zoning request verses denying it.

Sagami asked Harris if they would need to amend the findings-of-fact.

Harris said yes, several would need to be reworded. He suggested the board accept the staff report and come up with their respective findings.

Klempel pointed out that the variance request does not meet several of the criteria. The board continued to discuss how the variance does not meet the criteria.

Harris said staff deals with situations like this regularly. When two properties are both non-conforming, staff treats the situation differently than when one property is conforming and the other is non-conforming. Staff does not recommend moving a conforming property into a non-conforming status. Once the move is made, two non-conforming lots exist instead of one. If that is allowed to happen, a precedent is set.

Brown appealed to the board to make rational and common sense decisions about how situations such as this are handled. He feels the board is splitting a very fine hair with their debate. He doesn't feel a precedent will be set by allowing a zoning variance in this situation.

MAIN MOTION

Sagami made a motion seconded by Wagner to adopt staff report FZV 08-06 *(not accepting the findings or recommendation)* and modify the findings to prove there is a hardship that restricts reasonable use.

**BOARD
DISCUSSION**

Sagami explained his reasoning for wanting to approve the variance.

Harris told Sagami he might want to include in the motion that when the board accepts the staff report, the board is not accepting findings of fact or the recommendation.

ROLL CALL

On a roll call vote the motion failed 3-1 with Sagami in favor.

**SANDELIN
CONDITIONAL
USE PERMIT
(FCU 08-18)**

A request by Jay Sandelin, for a Conditional Use Permit to operate a helicopter school and tour service within the Highway 93 North, SAG-10 (Suburban Agricultural) Zoning District. The property is located at 1 McDermott Lane and contains 10 acres.

STAFF REPORT

Dianna Broadie reviewed Staff Report FCU 08-18 for the Board.

**BOARD
QUESTIONS**

Klempel asked about hours for the night flight operation.

Broadie deferred the question to the applicant.

**APPLICANT
PRESENTATION**

Jay Sandelin, owner of Triple X Helicopter, stated he was there to answer the board's questions.

Wagner asked what kind of containment the applicant plans to use for helicopter fuel.

Sandelin replied they would use a Department of Transportation (DOT) and Safety Oversight Audit approved truck. Helicopter fuel tanks support up to an hour of flight. Therefore, the truck would refuel the helicopters after an hour lesson and after hour long tours.

Sagami asked about the price of aviation fuel.

Sandelin said the price of aviation fuel has stayed at a high price even though the costs of diesel and regular fuel have dropped.

Wagner mentioned the proximity of the landfill and asked if seagulls would be a problem.

Sandelin stated they are aware that bird strikes are an issue and explained the research he had done in helicopters as far as flight path; there did not appear to be a problem with the seagulls. He referenced Klempel's earlier question on night hours of operation. The training flights take place around dusk and usually last an hour. The flights are planned flights with take off and landing the only time the helicopters are on or around the property in question. He plans to minimize fly time after dark by grouping students on certain nights of the week if the season of the year permits it.

Wagner asked if the students will be flying in the winter time.

Sandelin said yes.

The board and applicant discussed the physical attributes of the property and concerns about the impact to surrounding areas.

Sandelin stated a concern from the Riverdale Land Use Committee was noise levels. He went out with a sound level meter and checked different areas around town. The sound level of a helicopter at 140 rpm at 50 feet away was less than the noise at the entrance to the property at Highway 93 and Raceway Park, which is a neighbor and was also less than certain retail sites in Kalispell. The noise level was not as much of an issue as he thought it was going to be relative to what other noise already exists around the property.

Klempel asked if there would be a way for the helicopters to avoid flying over Hwy 93.

Sandelin explained the benefits of being able to include flying over 93 in their flight plans as well as the fact the helicopter gains altitude quickly so they should not interfere with traffic. He explained the steps his trainers take to not interfere with the public as far as noise pollution.

**PUBLIC
COMMENT**

None.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

Hollinger asked the applicant if the 5-year time limit is ok.

Sandelin stated it depends on the conditions. He preferred to not invest the time and money on infrastructure to have the possibility of being voted out of operating on the property after a 5-year time limit. He is not opposed to being voted out if it has something to do with development of the surrounding area. He suggested the condition be worded based on what the other property owners are doing at the time his limit comes due.

The board discussed imposing time limits, at length.

Hollinger asked how Sandelin felt about the fuel truck traveling off site after hours.

Sandelin said he would like to leave the truck onsite since the helicopters fuel up every hour or two but it would not be a permanent fixture.

Hollinger said it would be a scary proposition to have a fuel truck coming and going.

**MAIN MOTION
TO APPROVE
AS AMENDED**

Wagner made a motion seconded by Sagami to adopt the Staff Report FCU08-18 as findings-of-fact and grant the conditional use permit as amended. Changes were as follows:

- *Change Condition #6 to read three (not two) helicopters.*
- *Change Condition #7 to make an exception for fuel storage to allow a fuel truck to be parked onsite.*
- *Eliminate Condition #10.*

**BOARD
DISCUSSION**

Klempel felt condition #10 should be left in as a courtesy to the people who worked on the Riverdale Neighborhood Plan.

ROLL CALL

On a roll call vote the motion passed 3-1 with Klempel dissenting.

OLD BUSINESS

Harris updated the board on the status of Shagagi's request for a conditional use permit (FCU 08-15). He said the applicant requested to be on the February 2009 meeting.

Harris reviewed the Stoddard conditional use permit (FCU 08-13) which was previously approved by the board. The applicants' are requesting an additional event.

Hollinger asked if the board was to address the request for the additional event only.

Harris suggested the additional event was all they should address then talked about his role as the zoning administrator.

Craig Stoddard, 500 Wild Swan Trail in Bigfork, said he is back before the board to request an additional event. He said the event would be indoors and people would be carpooling, so noise would not be an issue. He said the neighbor who keeps complaining is harassing them. He said they were not trying to disregard the conditions set forth.

Harris asked the applicant about information that is on their website in regard to days and hours of operation.

Stoddard said the information is the event schedule for the event they are requesting.

Philip Timm, 1300 4th Avenue West in Kalispell, said this event doesn't change anything previously approved. He said they're trying to do something good and the neighbors that keep complaining don't even live on the property.

Cheryl Palmer said the only reason the applicants are requesting the additional event is because of complaints. She handed out flyers to the board and said the Stoddard's are planning more classes than they are admitting to. She feels they can find another place to hold their event. She talked about drumming and chanting from the Stoddard's and said it's been disruptive to their tenants. She stated she would not have known about the event being requested if a friend had not given her a flyer about the event. She said the events have substantially devalued neighboring properties and none of the neighbors want it.

Thomas Rifers, Foothills Rd, has known the Stoddard's a long time and said they're trying to accomplish something within the guidelines set forth. He supports them in their request. He does not understand the intensity of the complaints issued against them.

Harris talked about home occupations and said Stoddard's business is more than a home occupation. It does not meet the criteria of Section 5.06.020.

Stoddard thought the previously approved conditional use permit was specifically for the kid's camp and thinks there may be some confusion on the specifics of the permit.

The board discussed the rules for granting a conditional use permit at length.

Sagami asked whether or not he should vote on this event since he did not attend the November 5, 2008 hearing.

Harris said if he feels up to speed he can vote.

Wagner has a problem with the fact this request came in the day after a violation was filed. He also referenced a flyer for the event handed out before the meeting. He wondered why the applicant had not brought up this event at the meeting in which the conditional use permit was granted since the event in question had been scheduled since summer of 2008. He agreed with Harris that this does not qualify as a home occupation.

Sagami stated that the 9am–3pm operating hours stated on the original conditional use permit does not apply to the current event.

Wagner read the hours of operation from the conditions and said the applicant needed to obtain approval prior to an event.

Sagami agreed but said tonight is prior to the event, and he thought the 9am-3m issue did not pertain to additional events.

Wagner disagreed and read him the conditions from the original conditional use permit which stated the 9am-3pm time applied to additional meetings and conferences.

Harris stated the original conditional use permit covered the kid's camp and also covered all the activities not covered by the definition of a home occupation. The request is for an expansion of an activity that would fall under the permit and not as a home occupation.

Hollinger stated he wanted to keep the discussion on track to the requested event. The hours of operation were a separate issue.

Stoddard said most of the people who are coming to the event are signed up already and that is why they know how many people are coming. Originally, they did not know how many people were going to come. They now know 24 people are coming. They have set the limit on attendance at 25. He agreed they should have applied earlier, but they did not know the attendance number. If only 8 people signed up for the event and carpooled, there would not have been a need to request an additional conditional use permit for the event which may explain some of the delay in their request.

Harris disagreed with Stoddard's explanation of the timing of the request.

Palmer read from a letter she sent to the Stoddard's after receiving a phone message from Dana Stoddard. She reiterated in the letter her feelings of frustration with the situation.

**MOTION
TO DENY**

Klempel made a motion seconded by Wagner to deny the additional event requested pertaining to permit FCU 08-13.

ROLL CALL TO DENY	On a roll call vote the motion failed 2-2 with Hollinger and Sagami dissenting.
BOARD DISCUSSION	The board discussed the failure of the motion.
MOTION TO DENY DUE TO CONDITIONS	Wagner made a motion seconded by Klempel to deny the request for an additional event pertaining to conditional use permit FCU 08-13 based on conditions #1, 5, 9, 10, 11, 13, 15, and 16.
BOARD DISCUSSION	None.
ROLL CALL TO DENY DUE TO CONDITIONS	On a roll call vote the motion passed 3-1 with Sagami dissenting.
NEW BUSINESS	Klempel asked about board appointments. Harris said the Commissioners would make selections on December 3, 2008.
ADJOURNMENT	The meeting was adjourned at 9:05 p.m. on a motion by Klempel seconded by Wagner. The next meeting will be held at 6:00 p.m. on February 3, 2008.

Scott Hollinger, President

Donna Valade, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 5/5/09